

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

CHRISTY HART,

Plaintiff,

vs.

MIRAGE CASINO-HOTEL,

Defendant.

2:11-cv-1576-KJD-CWH

ORDER

This matter came is before the Court on Defendant Mirage Casino-Hotel's Motion to Strike (#25), filed July 9, 2012.

By way of this motion, Defendant requests that the Court, pursuant to Federal Rule of Civil Procedure 12(f), strike Plaintiff's response (#22) filed in opposition to Defendant's affidavit of fees and costs. Rule 12(f) provides that "[t]he court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." The court may enter an order to strike on its own or on motion by a party. *Id.* However, "[f]ederal courts generally disfavor motions to strike." *Leeward Capital, L.P. v. Archon Corp.*, 759 F.Supp.2d 1249, 1254 (D. Nev. 2010) (citation omitted). "A court must view the pleading under attack in the light most favorable to the pleader' and should not weigh the sufficiency of the evidence in evaluating a motion to strike.'" *Id.* (citation omitted). Whether to strike a filing is within the Court's discretion.

The primary basis for Defendant's request is that Plaintiff's response (#22) is really an untimely response to the motion to compel previously granted by the Court. *See* Order (#21). The Court agrees that some of the arguments set forth in the response should have been raised in response to the prior motion to compel, but declines to strike the filing. A party who may be subjected to fees and costs in relation to a motion made under Rule 37(a) must be given the

1 opportunity to be heard prior to an award of fees. *See* Rule 37(a)(5). If a party can show the
2 “nondisclosure, response, or objection was substantially justified” or that “other circumstances
3 make an award of expenses unjust” an award of fees is not appropriate. *See* Rule 37(a)(5)(ii),
4 (iii). In considering the Defendant’s request for fees (#22), the Court will give Plaintiff’s
5 response (#22) the consideration and weight it is entitled to under Rule 37.

6 Based on the foregoing and good cause appearing therefore,

7 **IT IS HEREBY ORDERED** that Defendant Mirage Casino-Hotel’s Motion to Strike
8 (#25) is **denied**.

9 DATED this 26th day of July, 2012.

10
11
12 
13 C.W. Hoffman, Jr.
14 United States Magistrate Judge
15
16
17
18
19
20
21
22
23
24
25
26
27
28